

REMARKS

Claims 1, 12, 30, 34 and 38 have been amended. Claims 2, 3, 6, 8, 10, 11, 15, 17, 19-29, 32, 33, 36, 37, and 39-48 have been canceled without prejudice. Claims 1, 4, 5, 7, 9, 12, 13, 14, 16, 18, 30, 31, 34, 35 and 38 are pending for the Examiner's consideration.

Applicants would like to thank the Examiner for acknowledging on page 17 of the Office Action that claims wherein Y is CR¹², R¹² is H, R¹ is some cyclic group provided for in the definition thereof, R² is H and A¹ is as provided for in the claims in their present form would be allowable. The claims have been amended as the Examiner has suggested. Accordingly, Applicants believe that all claims are in condition for allowance.

Applicants request reconsideration of this application in light of the foregoing amendments and following remarks.

Double Patenting

Applicants request that the examiner withdraw the provisional judicially created obviousness-type double patenting rejection over Application No. 11/213,038. With the submission of this response, applicants believe that all outstanding rejections have been overcome. MPEP § 804 I. B., reproduced below, states that when a provisional obviousness-type double patenting rejection is the only rejection remaining, the Examiner should withdraw the rejection and allow the application to issue as a patent.

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Rejection Under 35 USC § 112, first paragraph

Claims 1, 3-5, 7, 9, 12-14, 16, 18, 30, 31 and 38 were rejected under 35 USC § 112, first paragraph as allegedly not enabled for solvates as set forth on pages 7-10 of the Office Action. While the Applicants disagree with the Examiner, in the interest of expediting allowance of the present claims, the claims have been amended to remove the term “solvates” where appropriate. Where the rejected claims have been canceled, the rejection is moot. Withdrawal of the rejection under 35 USC § 112 is respectfully requested.

Rejection Under 35 USC § 112, second paragraph

Claims 1, 3-5, 7, 9, 12-14, 16, 18, 30, 31, 34, 35 and 38 were rejected under 35 USC § 112, second paragraph as allegedly indefinite for reciting the terms “heteroaryl” and “heteroalicyclic” as set forth on pages 10-12 of the Office Action. The Examiner has suggested on page 12 of the Office Action that the Applicants incorporate a more specific definition for “heteroaryl” and “heteroalicyclic”, such as is provided in original claim 9 into claims reciting the terms in dispute. While the Applicants disagree with the Examiner with regard to the definiteness of these terms, in the interest of expediting allowance of the present claims, the claims have been amended to recite the list from claim 9 into claims that recite the terms “heteroaryl” and “heteroalicyclic” as suggested by the Examiner. Withdrawal of the rejection under 35 USC § 112, second paragraph is respectfully requested.

Rejections Under 35 USC § 102

The amended claims are not anticipated by WO 98/37080 or US 6,313,137. For instance, in the amended claims, R¹ is selected from C₆₋₁₂ aryl, 5-12 membered heteroaryl, C₃₋₁₂ cycloalkyl, 3-12 membered heteroalicyclic, and not methyl as in Example 2.21 of WO ‘080 or amide as in Example 2.27 of US ‘137

Rejections Under 35 USC § 103

As noted above, Example 2.27 of US 6,313,137 does not teach or suggest all of the moieties of the claimed compounds. Therefore, the claims are not obvious over US ‘137.

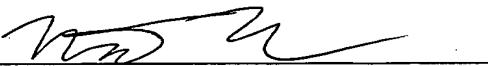
Conclusion

Applicants submit that the present application is in condition for allowance. Early Notice of Allowance is respectfully requested. The examiner is invited to contact that undersigned by telephone in order to advance prosecution of this application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date June 30, 2006

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5300
Facsimile: (202) 672-5399

Matthew E. Mulkeen
Attorney for Applicants
Registration No. 44,250